

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 957 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL and Sd/-

MR.JUSTICE R.P.DHOLAKIA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
  2. To be referred to the Reporter or not?
  3. Whether Their Lordships wish to see the fair copy of the judgement?
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge?  
1 to 5 - No
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STATE OF GUJARAT

Versus

BABUBHAI BUDHABHAI PATEL

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Appearance:

PUBLIC PROSECUTOR for Petitioner

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CORAM : MR.JUSTICE B.C.PATEL and

MR.JUSTICE R.P.DHOLAKIA

Date of decision:06-05-98

C.A.V. JUDGEMENT (Per: R.P.Dholakia,J.)

The respondent-accused was charged and tried for the offences punishable under Secs.498(A) and 306 of Indian Penal Code in Sessions Case No.5 of 1997 wherein learned Addl. Sessions Judge has acquitted the respondent-accused by the judgment and order dated 27-6-1997 against which, the present appeal is preferred

by the State.

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#. The case of the prosecution is that on 1-12-1987 at about 11 p.m., Nandaben, wife of Budhabhai Bijalbhai stated before PSI, Mr.U.R.Thakore, who was in-charge of Shehra Police Station, that her daughter-in-law, namely, Pushpaben aged about 20 years committed suicide by hanging herself inside the house. PSI, Mr.Thakore deputed PSO, who went to the scene of offence and started the investigation. It is revealed from the investigation that deceased-Pushpaben got married with Babubhai Budhabhai in the month of February, 1987 and thereafter, she was staying in the joint family of her husband, mother-in-law and younger brother-in-law, where she committed suicide as there was a quarrel between the husband and wife.

#. We have called for the record and proceedings of the trial Court. On going through the same, it appears that, Shehra Police has registered A.D.Case No.19/1987 and PSI, U.R.Thakore has filed a complaint on behalf of State under Sec.498(A) of Indian Penal Code. He has started the investigation, recorded the statement of various witnesses and accused was arrested on 5-1-1988. After completing investigation, Police has submitted the charge-sheet in the Court of learned Judicial Magistrate (First Class), Lunawada on 5-2-1988 and charge was framed against the accused under Sec.498(A). Learned Judicial Magistrate (First Class), after hearing both the parties, has passed the judgment and order in Criminal Case No.92 of 1988 on 24-8-1994 whereby accused was sentenced to undergo rigorous imprisonment for one year and also ordered to pay a fine of Rs.3,000/- (in default, to suffer two months' imprisonment).

#. Against the order of conviction, respondent-accused has preferred Criminal Appeal No.16 of 1994 before the Addl. Sessions Judge, Panchmahals at Godhra wherein learned Addl. Sessions Judge has set aside the judgment delivered by Judicial Magistrate (First Class), Lunawada. Thereafter, accused was committed to the Court of Sessions, Panchmahals at Godhra as per the directions of learned Addl. Sessions Judge. Charge was again framed against the accused and accused pleaded not guilty and claimed for trial. Learned Addl. Sessions Judge has disposed of the case in the year 1997.

#. Learned Addl. Public Prosecutor has argued that learned Addl. Sessions Judge ought to have convicted the accused believing the oral evidence of witnesses. He has

further argued that learned Addl. Sessions Judge has not properly appreciated the fact that the deceased-Pushapaben was disliked by the respondent-accused as she was having some trouble in speaking and therefore, accused was giving mental torture to the deceased. He has argued that the fact that the deceased has committed suicide within a span of seven years of her marriage should have been considered by learned Addl. Sessions Judge.

#. We have gone through the oral evidence of father and mother of the deceased on which reliance was placed by the prosecution. It is to be noted that no one has deposed about the demand of dowry. It appears that, as there was quarrel between the deceased and her husband, she used to go to her parental house and again she was sent back to her husband's house. From the cross-examination of above witnesses, it is revealed that deceased was not having any speaking trouble. So, there is no question of giving any mental torture by the accused on that ground. It is seen that accused was aged about 15 years and deceased was aged about 20 years. Deceased was fair and good looking whereas accused was short, black and thin and at the relevant time, he was in the classroom studying in 8th Standard in a School, which was 4 k.m. away from the place of incident. It is established that due to difference in their appearance, she did not like the respondent-accused and because of that, she used to leave the house quite often and ultimately she committed suicide. Prosecution has failed to establish that the respondent-accused is responsible for the same.

#. We have gone through the evidence which was suggested to be read by learned Addl. Public Prosecutor. In an appeal against the order of acquittal, though there is no limitation upon the power of the High Court to review at large the evidence upon which, the acquittal was founded and to reach to a conclusion that the order of acquittal should be reversed, in exercising that power and before reaching its conclusions upon fact, the High Court should and will always give proper weight and consideration to such matters as (1) the view of the trial Judge as to the credibility of the witnesses; ((2) the presumption of innocence in favour of the accused, a presumption certainly not weakened by the fact that he has been acquitted at the trial; (3) the right of the accused to the benefit of any doubt, and, (4) the slowness of an appellate Court in disturbing a finding of fact arrived at by a Judge who had the advantage of seeing the witnesses (AIR 1934 PC 227).

#. We are not discussing the evidence of each witness in detail in view of the observations made by the Hon'ble Apex Court in the case of STATE OF KARNATAKA VS. HEMAREDDY reported in AIR 1981 SC 1417 which reads as under:-

".... This court has observed in *Girija Nandini Devi V. Bigendra Nandini Chaudry* (1967) 1 SCR 93: (AIR 1976 SC 1124) that it is not the duty of the appellate court when it agrees with the view of the trial Court on the evidence to repeat the narration of the evidence or to reiterate the reasons given by the trial Court expression of general agreement with the reasons given by the Court the decision of which is under appeal, will ordinarily suffice."

#. Based on the above two observations and looking to the facts and circumstances of the case, appeal stands rejected.

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